

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MINDY M HANSON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 16A-UI-12586-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 18, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on January 12, 2017 at Fort Dodge, Iowa. Claimant participated along with Chris Hanson, her husband who acted as her representative. The employer participated through Jennifer Meyer, Area Supervisor and Heather Miller, Store Manager. Employer's Exhibit 1 was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store employee, beginning on April 2, 2015, October 21, 2016, when she was discharged for alleged theft of company property.

As part of her regular job duties once each month Ms. Meyer goes to each store she oversees and reviews all of the voids done by the store during the prior month. On October 20, during her routine audit of September 2016 voids Ms. Meyer discovered a large void during one of the claimant's shifts on September 18, 2016. She reviewed the surveillance video of the incident. She saw the claimant's husband and son come into the store. The claimant's son took the scanner gun and scanned a bunch of items that the claimant later voided out. It was that void that led Ms. Meyer to even look at the surveillance video. Ms. Meyer saw the claimant's son and husband each take a 32 ounce cup fill it full of ice cream and eat begin to eat it. Mr. Hanson used his visa card to pay for the purchase. The claimant only charged her husband for two 8 ounce cups of ice cream, not the 32 ounce size. Ms. Meyer did not see Mr. Hanson or the claimant's son fill an 8 ounce cup and put it inside the 32 ounce cup. Because Ms. Meyer concluded that the claimant had undercharged her husband and son for ice cream she instructed store manager Ms. Miller to discharge the claimant. Company policy, a copy of which had been given to the claimant, put her own notice that the employer would discharge for even one instance of theft from the store.

Ms. Miller did not view the surveillance video. The video was not provided for the claimant to review, nor was it offered as an exhibit at the hearing.

The claimant denies undercharging her husband and son for store product. Mr. Hanson testified that he had an 8 ounce cup of ice cream inside a 32 ounce cup. The employer did not have a problem with a customer using two different sized cups.

The only reason Ms. Hanson was discharged was due to her alleged theft. Two eight ounce dishes of ice cream cost \$3.75 and two 32 ounce dishes of ice cream cost \$7.98.

The store manager Ms. Miller allowed some employees to violate company policies on occasion. Ms. Miller allowed the claimant to consume product she had not paid for, so long as she promised to pay the store for it on payday Friday. Ms. Miller also asked the claimant not to report to Joann another long term employee, when she would allow her to violate policies like eating food prior to paying for it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The employer did not provide the surveillance video that would have shown whether Mr. Hanson and his son actually used an 8 ounce cup inside of a 32 ounce cup or not. Both Mr. Hanson and the claimant contend that it was an 8 ounce cup inside a 32 ounce cup. Only Ms. Meyer viewed the surveillance video, Ms. Miller had never seen what actually occurred.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer simply has not met their burden of proof to establish that the claimant undercharged her husband for the ice cream. As the employer has not proven the theft of company property, no disqualifying misconduct has been established. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 18, 2016, (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs